

Update: Traffic Benchbook— Third Edition, Volume 1

CHAPTER 2

Civil Infractions

Add the following new sections to Chapter 2, beginning on page 94:

2.23 Failing to Assure Title Transfer When Vehicle Is Sold

A. Statute

A person, other than a licensed dealer, who sells a vehicle remains liable for damages or violations of law resulting from the use or ownership of that vehicle unless the person has complied with the requirements of MCL 257.240.*

MCL 257.240 states, in part:

“(1) The owner of a motor vehicle who has made a bona fide sale by transfer of his or her title or interest and who has delivered possession of the vehicle and the certificate of title to that vehicle properly endorsed to the purchaser or transferee is not liable for any damages or a violation of law that subsequently results from the use or ownership of the vehicle by another, if the owner, other than a licensed dealer, satisfies the conditions prescribed under subsection (2).

“(2) The owner of a motor vehicle, other than a licensed dealer, shall satisfy 1 of the following conditions:

“(a) Accompany the purchaser of the vehicle to a secretary of state branch office to assure that the title of the vehicle being sold is transferred.

“(b) Maintain a record of the sale for not less than 18 months. As used in this subdivision, ‘record of the sale’ means either a photocopy of the reassigned title or a form or document that includes the name, address, driver license

*Effective
October 1,
2005, 2004 PA
493.

number, and signature of the person to whom the vehicle is sold and the purchase price and date of sale of the vehicle.”

B. Civil Sanctions for Failing To Assure Title Transfer When Vehicle Is Sold

“A person who violates [MCL 257.240](2) is responsible for a civil infraction and shall be ordered to pay a civil fine of \$15.00.” MCL 257.240(3). The general rules for assessing costs apply to violations of MCL 257.240(2). See Section 1.20 of this volume for a discussion of the general rules governing the assessment of costs. In addition to the civil fine and costs, a person who is responsible for violating MCL 257.240(2) must pay a justice system assessment of \$40.00. MCL 257.907(4) and (14).

C. Licensing Sanctions for Failing To Assure Title Transfer When Vehicle Is Sold

No points. MCL 257.320a. The finding of responsibility is not reported to the Secretary of State. MCL 257.732(16)(b).

D. Issues

A person who fails to satisfy either condition in MCL 257.240(2) “is presumed to be the last titled owner and to be liable for towing fees and daily storage fees for an abandoned motor vehicle.” MCL 257.240(4).

2.24 Abandoning a Vehicle and Failing to Redeem It Before Disposition

A. Statute

The vehicle code prohibits vehicle abandonment and penalizes a person who abandons a vehicle *and* fails to redeem the vehicle before it is disposed of according to MCL 257.252g. MCL 257.252a(1).*

MCL 257.252a states, in part:

“(1) A person shall not abandon a vehicle in this state. It is presumed that the last titled owner of the vehicle is responsible for abandoning the vehicle unless the person provides a record of sale as that term is defined in [MCL 257.]240. A person who violates this subsection and who fails to redeem the vehicle before disposition of the vehicle under section 252g is responsible for a civil infraction and shall be ordered to pay a civil fine of \$50.00.”

For purposes of MCL 257.252a, an abandoned vehicle is

*Effective October 1, 2005, 2004 PA 495.

- ◆ a vehicle that has remained on private property without the property owner's consent;
- ◆ a vehicle that has remained on public property for not less than 48 hours;
- ◆ a vehicle that has remained on a state trunk line highway for not less than 18 hours if a valid registration plate is affixed to the vehicle; or
- ◆ a vehicle that has remained on a state trunk line highway if there is not a valid registration plate affixed to the vehicle.

MCL 257.252a(2).

The manner in which a vehicle's status is determined and the steps required to provide notice to the last titled owner of the vehicle are outlined in MCL 257.252a(3)–(5). The procedures by which an individual may contest the conclusion that the vehicle is abandoned, challenge the reasonableness of towing and storage fees, or redeem the vehicle before disposition are described in MCL 257.252a(6) and (7).

B. Civil Sanctions for Abandoning a Vehicle and Failing to Redeem It Before Disposition

A person who abandons a vehicle and fails to redeem it before disposition as provided by MCL 257.252g is responsible for a civil infraction and shall pay a fine of \$50.00 and a justice system assessment of \$40.00. MCL 257.252a(1); MCL 257.907(14). The general rules for assessing costs apply to violations of MCL 257.252a(1). See Section 1.20 of this volume for a discussion of the general rules governing the assessment of costs.

C. Licensing Sanctions for Abandoning a Vehicle and Failing to Redeem It Before Disposition

No points. MCL 257.320a. The finding of responsibility is not reported to the Secretary of State. MCL 257.732(16)(b).

Update: Traffic Benchbook— Third Edition, Volume 3

CHAPTER 3

Section 625 Offenses

3.4 OWI or OWVI Causing Death of Another — §625(4)

B. Elements

4. The defendant's operation of the motor vehicle caused the death of another person.

On page 131, change the sub-subsection heading as indicated above and replace the first paragraph and the **Note** following it with the following text:

The causation element of MCL 257.625(4) requires only that a defendant's operation of a motor vehicle—not a defendant's operation of a vehicle as affected by the defendant's state of intoxication—be a factual and proximate cause of the harm resulting from the statutory violation. *People v Schaefer*, 473 Mich 418, 446 (2005). In the consolidated cases decided in *Schaefer*, the Michigan Supreme Court overruled *People v Lardie*, 452 Mich 231 (1996), to the extent that *Lardie* concluded the statute required that a defendant's driving as affected by his or her intoxication be a substantial cause of the victim's death.* *Schaefer, supra* at 422, 433–34, 446.

The *Schaefer* Court explained:

“The plain text of §625(4) does not require that the prosecution prove the defendant's intoxicated state affected his or her operation of the motor vehicle. Indeed, §625(4) requires no causal link at all between the defendant's intoxication and the victim's death. . . .

“Quite simply, by enacting §625(4), the Legislature intended to punish ‘operating while intoxicated,’ not ‘operating in an intoxicated manner.’” *Schaefer, supra* at 422.

*Other *Lardie* holdings were not disturbed by *Schaefer*. *Schaefer, supra* at 422 n 4.

The *Schaefer* Court explained that the causation element of §625(4) must be construed “according to the actual text of the statute[:.]”

“Section 625(4) plainly requires that the victim’s death be caused by the defendant’s *operation* of the vehicle, not the defendant’s *intoxicated* operation. Thus, the manner in which the defendant’s intoxication affected his or her operation of the vehicle is unrelated to the causation element of the crime. The defendant’s status as ‘intoxicated’ is a separate element of the offense used to identify the class of persons subject to liability under §625(4).” *Schaefer*, *supra* at 433.

A prosecuting attorney must prove that a defendant’s operation of a motor vehicle was a factual cause of a victim’s death: that “but for” the defendant’s operation of the vehicle, the victim’s death would not have occurred. A prosecuting attorney must also prove that the defendant’s operation of the vehicle was a proximate cause of the victim’s death: that the victim’s death was a direct and natural result of the defendant’s operation of the vehicle. It must also be determined that no intervening cause severed the causal link between the defendant’s operation of the vehicle and the victim’s death. An intervening cause is sufficient to sever that causal link if it was not reasonably foreseeable. An act of God or a victim’s or third party’s gross negligence or intentional conduct is generally unforeseeable and thus a sufficient intervening cause; ordinary negligence is foreseeable and thus not a sufficient intervening cause. *Id.* at 435–39.

CHAPTER 3

Section 625 Offenses

3.5 OWI or OWVI Causing Serious Impairment of a Body Function — §625(5)

B. Elements

4. The defendant's operation of the motor vehicle caused another person to suffer serious impairment of a body function.

On page 137, change the sub-subsection heading as indicated above and replace the first paragraph and the **Note** following it with the following text:

The causation element of MCL 257.625(4) requires only that a defendant's operation of a motor vehicle—not a defendant's operation of a vehicle as affected by the defendant's state of intoxication—be a factual and proximate cause of the harm resulting from the statutory violation. *People v Schaefer*, 473 Mich 418, 446 (2005). In the consolidated cases decided in *Schaefer*, the Michigan Supreme Court overruled *People v Lardie*, 452 Mich 231 (1996), to the extent that *Lardie* concluded the statute required that a defendant's driving as affected by his or her intoxication be a substantial cause of the victim's death.* *Schaefer*, *supra* at 422, 433–34, 446.

*Other *Lardie* holdings were not disturbed by *Schaefer*. *Schaefer*, *supra* at 422 n 4.

The *Schaefer* Court explained:

“The plain text of §625(4) does not require that the prosecution prove the defendant's intoxicated state affected his or her operation of the motor vehicle. Indeed, §625(4) requires no causal link at all between the defendant's intoxication and the victim's death. . . .

“Quite simply, by enacting §625(4), the Legislature intended to punish ‘operating while intoxicated,’ not ‘operating in an intoxicated manner.’” *Schaefer*, *supra* at 422.

The *Schaefer* Court explained that the causation element of §625(4) must be construed “according to the actual text of the statute[:.]”

“Section 625(4) plainly requires that the victim's death be caused by the defendant's *operation* of the vehicle, not the defendant's *intoxicated* operation. Thus, the manner in which the defendant's intoxication affected his or her operation of the vehicle is unrelated to the causation element of the crime. The defendant's status as ‘intoxicated’ is a separate element of the offense used to identify the class of persons subject to liability under §625(4).” *Schaefer*, *supra* at 433.

A prosecuting attorney must prove that a defendant's operation of a motor vehicle was a factual cause of a victim's death: that "but for" the defendant's operation of the vehicle, the victim's death would not have occurred. A prosecuting attorney must also prove that the defendant's operation of the vehicle was a proximate cause of the victim's death: that the victim's death was a direct and natural result of the defendant's operation of the vehicle. It must also be determined that no intervening cause severed the causal link between the defendant's operation of the vehicle and the victim's death. An intervening cause is sufficient to sever that causal link if it was not reasonably foreseeable. An act of God or a victim's or third party's gross negligence or intentional conduct is generally unforeseeable and thus a sufficient intervening cause; ordinary negligence is foreseeable and thus not a sufficient intervening cause. *Id.* at 435–39.

CHAPTER 3

Section 625 Offenses

3.8 Operating With the Presence of Drugs — §625(8)

B. Elements

2. At the time the defendant operated the vehicle, “any amount of a controlled substance” was present in the defendant’s body.

Insert the following text after the paragraph at the top of page 148:

Carboxy THC,* a metabolite of THC (the psychoactive ingredient of marijuana), is not a schedule 1 controlled substance; however, the presence of carboxy THC in a person’s blood is conclusive evidence of THC’s presence in that person’s body. Because marijuana is a schedule 1 controlled substance (MCL 333.7212(1)(c)) and because the presence of carboxy THC proves the presence of THC in a person’s body, the presence of carboxy THC in a person’s blood may establish that the individual violated MCL 257.625(8). *People v Derror (On Reconsideration)*, ___ Mich App ___, ___ (2005).

*Tetrahydrocannabinol.

In determining whether the trial court properly concluded that carboxy THC is not a schedule 1 controlled substance, the *Derror* Court first looked at the plain language of the relevant statutes. The Court noted that carboxy THC was not a “synthetic equivalent” of THC and that it clearly was “not a part of the actual plant” for purposes of the definition of marijuana found in MCL 333.7212(1)(d). The Court held that the trial court correctly found that carboxy THC was not a schedule 1 drug and further explained this conclusion in light of the standard rules of statutory construction:

“We note that the Legislature could have included metabolites in the definition of marijuana or schedule 1 controlled substances if it so intended. Under the probate code, for example, certain parties are required to report if ‘a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body.’ ‘[T]he Legislature is presumed to be aware of all existing statutes when enacting new laws.’ As the Legislature expressly included metabolites in another statute, we must assume that it intended to expressly *exclude* the regulation of these substances in the public health code.” *Derror, supra* at ___ (footnotes omitted).

Although carboxy THC is not a schedule 1 drug and could not, alone, satisfy the requirement in MCL 257.625(8) that a person operated a vehicle with the presence of any amount of a controlled substance in his or her body, “the presence of carboxy THC in a person’s blood *conclusively* establishes the prior ingestion of THC.” *Derror, supra* at ___.

CHAPTER 4

Section 904 Offenses

4.2 Driving While License Suspended or Revoked Causing Death—§904(4)

A. Elements of the Offense

3. By operation of the motor vehicle, the defendant caused the death of another person.

On page 160, replace the text in this sub-subsection with the following:

Based on the outcome in *People v Schaefer*, 473 Mich 418, 446 (2005), the Michigan Supreme Court reversed the Court of Appeals' decision in *People v Schut* (*Schut I*), 265 Mich App 446 (2005), because *Schaefer* overruled the part of *People v Lardie** on which the Court of Appeals relied in deciding *Schut*. *People v Schut* (*Schut II*), ___ Mich ___ (2005). In *Schut II*, the Court remanded the case to the District Court for reconsideration in light of *Schaefer*.

The *Schaefer* Court determined that the causation element of MCL 257.625(4) requires only that a defendant's operation of a motor vehicle—not a defendant's operation of a vehicle as affected by the defendant's state of intoxication—be a factual and proximate cause of the harm resulting from the statutory violation. *Schaefer, supra* at 446. The *Schaefer* Court explained that the causation element of §625(4) must be construed “according to the actual text of the statute[:.]”

“Section 625(4) plainly requires that the victim's death be caused by the defendant's *operation* of the vehicle, not the defendant's *intoxicated* operation. Thus, the manner in which the defendant's intoxication affected his or her operation of the vehicle is unrelated to the causation element of the crime. The defendant's status as ‘intoxicated’ is a separate element of the offense used to identify the class of persons subject to liability under §625(4).” *Schaefer, supra* at 433.

*452 Mich 231 (1996). *Schaefer* overruled *Lardie* to the extent that *Lardie* ruled that a defendant's driving—as affected by the defendant's intoxication—must be a substantial cause of the harm resulting from the statutory violation. *Schaefer, supra* at 422 n 4.

This reasoning as applied to the facts in *People v Large* (a companion case decided in *Schaefer*) necessitated the Court's reversal in *Schut I*. The facts in *Schut* are similar to the facts in *Large*. In *Large*, the victim rode down a partially obstructed hill onto a busy road on a bicycle without brakes. In *Schut*, the victim drove a snowmobile into the path of the defendant's truck. Under *Schaefer*'s rule, whether a defendant is liable for the harm caused by a collision that occurs during the defendant's operation of a motor vehicle while intoxicated (*Large*), or when the defendant's license has been suspended or revoked (*Schut*), requires an analysis of both factual and proximate cause.* *Schaefer, supra* at 435–39.

*See this month's update to Volume 3, Section 3.4, above.